IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5079 of 2000
WITH
SPECIAL CIVIL APPLICATION NO 4935 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAVESH JAYANTILAL DESAI
Versus
STATE OF GUJARAT 3RD SPECIAL LAND ACQUISITION

Appearance:
MR HR PRAJAPATI for Petitioner
MRS HANSA PUNANI, AGP for Respondent No. 1
MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 25/08/2000

ORAL COMMON JUDGEMENT

1. Learned counsel appearing for the petitioner in both these petitions and learned AGP Mrs. Hansa Punani have jointly submitted that both these petitions are

identical in nature and the stand taken by the petitioner qua detention order passed against the detenu in each petition is based on similar legal issues and so both these petitions can be heard together and disposed of by the common judgment. Under the circumstances, both these petitions are heard together and are disposed of by this common judgment.

2. So far as Spl.C.A. No.5079/2000 is concerned, impugned order of detention is passed on 28.4.2000 and was executed and communicated to the detenu on 8.5.2000 at 6.00 P.M. The detenu at the relevant point of time was in judicial custody and was undertrial of a criminal case and so, it was easy for the detaining authority to communicate and execute order of detention to the detenu at the earliest even than the order of detention was communicated on the 12th day. Order of detention was approved by the respondent State Government on 9.5.2000. Same is the case of the detenu of Spl.C.A. No. 4935/2000. The impugned order of detention is passed on 27.4.2000 and same came to be executed on 9.5.2000. The detenu was also at the relevant point of time in judicial custody and was undertrial of a criminal case and though it was easy for the detaining authority to communicate and execute the order of detention to the detenu at the earliest, even than the order of detention was communicated beyond a period of 12 days. The stand of the respondent State is that impugned order of detention was communicated on 8.5.2000 and not on 9.5.2000. Even if for the sake of arguments it is accepted that the impugned order of detention was communicated to the detenu of Spl.C.A. No. 4935/2000 on 8.5.2000, it can legitimately be argued that it was communicated on the 12th day of the passing of the order of detention.

3. It has been argued by learned counsel Mr. H.R. Prajapati appearing for the detenues in both these petitions that as per the statutory right conferred on the detenu, detenu has right to make representation before the detaining authority within 12 days from the date of passing of the order. In both these petitions, impugned order of detention was communicated to the detenues on 12th day and, therefore, there was no opportunity for them to make representation against the order of detention before the detaining authority who, after recording subjective satisfaction, has passed the impugned orders. Delay in communicating order of detention has thus, seriously prejudiced the right of the detenues to make effective representation and, therefore, impugned orders of detention require to be quashed and set aside.

4. I have gone through the affidavit in reply filed by the District Magistrate, Vadodara in both these petitions. Learned District Magistrate has tried to explain the delay, but the court cannot ignore statutory provisions of the Act. Learned counsel appearing for the petitioners has drawn attention of this Court to the judgment delivered by this Court (Coram : M.R.Calla, J) in Spl.C.A. No.5076/2000 & Group (Navinchandra Bhagvandas Gandhi v/s State of Gujarat & others) on 11.8.2000, wherein this Court, quashed and set aside the orders of detention on the ground of delay in execution of the orders of detention which has necessarily resulted into a denial of opportunity under Article 22(5) of the Constitution of India to the detenues for representing their case before the detaining authority, more particularly when the detenues were in judicial custody and it was easy for the detaining authority to execute the orders of detention. On that ground alone, the Court quashed and set aside the impugned orders of detention.

5. I have gone through the aforesaid judgment. I am satisfied that the facts of present case are identical to the facts of the cases wherein above-referred decision came to be delivered and said decision is squarely applies to the facts of the present case. There is no dispute that both the detenues were in judicial custody when impugned orders of detention came to be passed against them. Further, in the affidavit-in-reply filed on behalf of the State of Gujarat, no cogent and convincing explanation is forthcoming as to why the impugned orders of detention were not executed on the detenues immediately or under what circumstances, delay was caused in execution of the said orders. Under the circumstances, impugned orders of detention passed against the detenues of these petitions require to be quashed and set aside on the ground of delay in execution of orders of detention resulting into denial of opportunity to the detenues for representing their case before the detaining authority amounting to violation of Article 22(5) of the Constitution of India.

6. Ms. Davawala, learned counsel appearing for the Union of India has nothing to submit as the grievance raised by the petitioners in these petitions is mainly against the State of Gujarat and Detaining Authority.

7. In the result, both these petitions are hereby allowed. Impugned order of detention dated 28.4.2000 passed by the District Magistrate, Vadodara passed against the detenu Shri Bhavesh Jayantilal Desai of

Spl.C.A. No. 5079/2000 is hereby quashed and set aside. Rule is made absolute. No costs. Detenu Shri Bhavesh Jayantilal Desai is ordered to be set at liberty forthwith if not required to be detained in any other case. Since detenu is at present detained in Sabarmati Central Prison, Ahmedabad, writ be sent to the jail authorities of Sabarmati Central Prison, Ahmedabad.

Similarly, impugned order of detention dated 27.4.2000 passed by the learned District Magistrate, Vadodara passed against detenu Shri Brijeshkumar Kishorsinh Chauhan of Spl.C.A. No. 4935/2000 is hereby quashed and set aside. Rule is made absolute. No costs. Detenu Shri Brijeshkumar Kishorisnh Chauhan is hereby ordered to be set at liberty forthwith if not required to be detained in any other case.

DIRECT SERVICE is permitted.

Copy of this common judgment be kept in Spl.C.A. No. 4935/2000.

25.8.2000 [C.K. BUCH, J]
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